



## **CITY OF PHILADELPHIA**

# **INITIAL BARGAINING PROPOSALS FOR A SUCCESSOR AGREEMENT TO BEGIN ON JULY 1, 2021 WITH FRATERNAL ORDER OF POLICE LODGE 5**

These proposals are made without prejudice to the City's position in any grievance, grievance arbitration, unfair labor practice, court case, or appeals thereof. The City reserves the right to add to, delete and modify these proposals during the course of negotiations and interest arbitration proceedings.

**Submitted December 30, 2020**

## TABLE OF CONTENTS

|  | <b>Page</b> |
|--|-------------|
| 1. RESIDENCY .....                                   | 3           |
| 2. TRANSFERS .....                                   | 3           |
| 3. DISCIPLINE AND DISCHARGE .....                    | 3           |
| 4. LEGAL SERVICES.....                               | 3           |
| 5. HEART AND LUNG .....                              | 4           |
| 6. CIVILIANIZATION.....                              | 7           |
| 7. GRIEVANCE AND ARBITRATION.....                    | 7           |
| 8. HEALTH AND WELFARE.....                           | 9           |
| 9. HOURS OF WORK AND OVERTIME .....                  | 10          |
| 10. COMPENSATION .....                               | 10          |
| 11. APPEARANCE BEFORE CIVIL OR JUDICIAL BODIES ..... | 10          |
| 12. WORK SCHEDULES .....                             | 10          |
| 13. VACATION.....                                    | 11          |
| 14. SICK LEAVE: .....                                | 11          |
| 15. HOLIDAYS .....                                   | 12          |
| 16. PERFORMANCE EVALUATIONS.....                     | 12          |
| 17. PROMOTIONS.....                                  | 12          |
| 18. MEDICAL EXAMINATIONS.....                        | 13          |
| 19. FRATERNIZATION .....                             | 13          |

1. RESIDENCY

- (a) Employees hired on or after July 1, 2016 shall be required to live in the City of Philadelphia as a condition of employment.
- (b) No City vehicles may be taken outside the City of Philadelphia, except on police business. Employees who live outside the City may not take their vehicles home with them.

2. TRANSFERS

- (a) Any contract provision or past practice or alleged past practice limiting the City's ability to transfer employees to meet the operational needs of the Department is abolished and the Department shall be permitted to transfer any employee at any time for any reason in its sole discretion.
- (b) Any employee who is unable to perform police work for any reason for a period of 90 days or more may be transferred/demoted by the Department to a civilian position. The employee will receive the pay and benefits associated with the civilian position. If the employee is able to resume performing police work in the future, the employee may apply for reinstatement. If reinstated, the employee will not be entitled to back pay or back benefits but will have their seniority reinstated for any non-economic purpose (e.g., selection of vacation).
- (c) Implement a mandatory rotation policy.

3. DISCIPLINE AND DISCHARGE

The DISCIPLINE AND DISCHARGE provisions shall be amended as follows:

- (a) If the Department proves the employee committed the misconduct specified, the arbitrator shall have no authority to alter the penalty imposed by the Department within the range of the Disciplinary Code.
- (b) The Department shall have the right to revise the Police Board of Inquiry procedures in its sole discretion.<sup>1</sup>

4. LEGAL SERVICES

Any funds provided by the City to the FOP Legal Services Fund may not be used to bring claims against the City or to defend claims involving an officer's employment, including, but not limited using the funds for grievance and arbitration

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<sup>1</sup> Submitted as declaration of an existing right.

proceedings, heart and lung proceedings, civil service proceedings, or any other employment-related legal actions.

5. HEART AND LUNG

- (a) A Claimant's entitlement to Heart and Lung benefits shall be suspended, discontinued or modified by a Notice of Suspension/Modification (NOS/M form) when the claimant returns to work, without the need for a hearing, except that the claimant shall have 30 days within which to challenge the suspension/modification by reserving said right on the NOS form and mailing it to the TPA in a timely manner.

If the City proves by a preponderance of the evidence that the claimant's entitlement to Heart and Lung benefits should be discontinued or terminated upon evidence establishing maximum medical improvement, non-compliance, full recovery or other good reason, the Arbitration Panel shall immediately issue an interlocutory order granting supersedeas.

If the Panel terminates and/or discontinues the Claimant's Heart and Lung benefits by interlocutory order, the City will place the claimant on workers' compensation, if eligible, during the pendency of the litigation.

The interlocutory order issued by the Arbitration Panel at the initial hearing shall not constitute a final decision on the merits. The interlocutory order also shall not affect the Claimant's rights to continue treating with Heart and Lung Panel providers during the pendency of the appeal.

- (i) When a Claimant has been unable to return to full duty work in his/her position for a cumulative period of 550 calendar days resulting from a compensable Heart and Lung injury, the Arbitration Panel will find that the Claimant's injury is no longer temporary.

- (1) For purposes of this Section, the presumption that an injury is no longer temporary is established upon the Arbitration Panel's receipt of competent medical evidence supporting that the injury continues to result in light duty or no duty status following Claimant's failure to be able to return to full duty work in his/her position for the cumulative 550-day period.

- (2) This presumption is rebuttable upon evidence that establishes that Claimant will return to work in a full duty capacity in a limited time period with no further restrictions in the future. The limited period must be of such a nature that the Arbitration Panel can reasonably believe that the additional period of disability is truly temporary with a definitive ending and will not extend for another indefinite time period.

- (ii) After proper notice to the parties, a hearing will be automatically scheduled at the next available hearing date, but not less than 30 days following service of the notice of hearing. The hearing will

address the presumption of No Longer Temporary status and the employee's continuing eligibility for Heart and Lung benefits.

- (iii) Claimant's Heart and Lung benefits shall be terminated at this hearing on the basis that Claimant's disability is no longer temporary, unless Claimant presents competent medical evidence at the hearing which establishes that Claimant's injury remains temporary. The litigation cycle for all Heart and Lung matters shall be no longer than 180 days from the filing of the appeal(s), regardless of the number or time of filing of additional appeals, unless good cause is shown for an extension. Said litigation cycle shall be memorialized in a litigation schedule approved by the Arbitrators.
- (b) All officers receiving Heart and Lung benefits shall solely be paid 100% of their base salary. Officers in IOD/Non-Duty status shall not accrue or be permitted to use any paid leave benefits.
- (c) In the event of an award of counsel fees related to an officer's receipt of disability benefits during a period when the officer is receiving Heart and Lung benefits in lieu of workers' compensation benefits, the counsel fee shall be deducted from the officer's Heart and Lung benefits and paid to the officer's attorney as a fee. In no event shall the City be obligated to pay a counsel fee over and above the amount it is obligated to pay an officer in disability benefits pursuant to the Heart and Lung Act.
- (d) During any period which an officer is receiving disability benefits from the City, including Heart and Lung Benefits, Regulation 32 Benefits, Workers' Compensation Benefits, and/or Service Connected Disability Benefits, all officers have an affirmative duty to report, in writing, to the Police Safety Office any outside employment they have, including self-employment, together with the specifics of such employment, including:
  - (i) The name and address of the employer;
  - (ii) The amount of wages from any such employment or self-employment;
  - (iii) The dates of such employment or self-employment;
  - (iv) The nature and scope of such employment or self-employment; and
  - (v) Any other information relevant in determining the officer's entitlement to or amount of compensation.

The report referred to above must be made as soon as possible, but no later than thirty (30) days after such employment or self-employment commences.

- (e) During any period during which an officer is receiving disability benefits from the City, including Heart and Lung Benefits, Regulation 32 Benefits, Workers' Compensation Benefits, and/or Service Connected Disability Benefits, the City or its Third Party Administrator (TPA) may submit to the officer every ninety (90) days a Verification Form permitted under Section 311.1(d) of the Pennsylvania Workers' Compensation Act. The officer is obligated to accurately complete the verification form and return it to the sending agent within thirty (30) days of mailing the Verification Form. Should the officer fail to return the completed Verification Form to the sending agent within thirty (30) days of the date on which the form was sent, the City is permitted to suspend any and all disability compensation payments to the officer until such time as the completed Verification Form is returned to the sending agent. Should the officer return the Verification Form to the sending agent more than thirty (30) days after it was sent to the officer, the City shall reinstate any disability benefits due the officer, effective the date on which the Verification Form is received by the sending agent. The City shall have no obligation to retroactively reinstate the officer's disability benefits, the officer having forfeited entitlement to disability benefits between the date on which the Verification Form was due back to the sending agent, and the date on which the Verification Form was actually received by the sending agent.
  
- (f) Any police officer on Heart and Lung IOD status must remain at his/her residence or place of recuperation until returning to work on full or limited duty. An officer may leave his/her residence or place of recuperation to visit the following:
  - (i) Doctor's Office;
  - (ii) Pharmacy;
  - (iii) Place of worship;
  - (iv) Retail outlet selling primarily foodstuffs; and
  - (v) Other locations approved by the officer's Commanding Officer.

An officer must notify his/her district/unit prior to departure from his/her residence or place of recuperation and when returning to that residence/place of recuperation.

The supervisor notified will enter the time of the officer's departure and return in the "remarks" column of the D.A.R. The purpose of this procedure is to allow the officer to leave his or her place of residence or recuperation for basic personal or injury/illness related needs.

- (g) The City shall receive a dollar for dollar credit taken against any City service retirement pension benefits whenever an officer receives any service retirement pension benefits and workers' compensation benefits.
- (h) Modify the procedure in paragraph 16 of the 2014-2017 Act 111 Award to provide that the time for striking a neutral arbitrator from the Heart and Lung panel shall run from October 1-October 15 each year unless different dates are agreed upon by the parties.
- (i) For the purposes of the H&L Act implementation in the City, performance of duties shall be defined as the engagement in any activity, assignment, duty or function involving the protection of life and property, enforcement of laws, and/or investigation of crimes. The standard for performance of duties is consistent with the essential functions of a patrol officer, namely, the use of firearms, patrolling and the apprehension of suspects. Performance of duties does not include administrative assignments that may be incident to the job but are not the primary functions of a police officer.
- (j) Eliminate the past practice of paying injured employees at 100% of salary when receiving Regulation 32 benefits. Employees receiving Regulation 32 benefits shall be paid at 80% of their salary in accordance with Civil Service Regulation 32.023.

## 6. CIVILIANIZATION

The City may move positions and/or duties outside of the bargaining unit that, in the judgment of the Appointing Authority, may be performed by civilian employees, regardless of whether in the past those duties have constituted bargaining unit work. This includes, but is not limited to, creation of civilian public safety officers and conduct of investigations.<sup>2</sup>

## 7. GRIEVANCE AND ARBITRATION

The GRIEVANCE AND ARBITRATION provision shall be revised and amended, as necessary, to improve the efficiency of the contractual dispute resolution procedure including the following:

- (a) Disciplinary suspensions of ten (10) work days or less shall not be subject to arbitration.
- (b) Performance reports, transfers, written or verbal reprimands, and IOD issues shall not be subject to arbitration.<sup>3</sup>

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<sup>2</sup> Submitted as a declaration of an existing right.

<sup>3</sup> Submitted as declaration of an existing right.

- (c) All grievances must specifically identify the contractual provision alleged to have been violated and language such as “all others applicable” shall not be permitted. No amendments to the grievance shall be permitted after the time period for filing a grievance has passed.
- (d) Employees discharged due to criminal charges shall not be eligible for any back pay in the event of reinstatement.
- (e) Grievance arbitration awards providing for back pay shall not include pay for overtime not worked.
- (f) Any grievance arbitration award that includes an award for lost overtime will not provide for the payment of cash overtime, but rather shall mean that the employee will be provided the opportunity to work the hours that have been identified as lost overtime, either through the award of the arbitrator or through the agreement of the parties, within a specified period of time determined by the arbitrator or through agreement of the parties.
- (g) Employees who are reassigned or suspended due to charges of domestic abuse, shall not be eligible for any economic award in the event that such charges are not sustained due to a lack of prosecution or cooperation by the charging party.
- (h) Employees charged with criminal misconduct by a jurisdiction other than Philadelphia, who are suspended, reassigned or discharged as a result of those charges shall not be eligible for any economic award in the event that their discipline is rescinded during the grievance and arbitration process.
- (i) Implementation of Arbitration Remedies – The City shall not be required to make any interest payment on the implementation of arbitration remedies or settlement agreements for a period of 120 days from the date of the award or of the settlement. This time period shall be extended in the event an award is appealed and shall not commence until final resolution of the appeal process. This time period shall also be extended and shall not commence until an employee provides required documentation of outside employment or offsetting wages. In the event that a remedy covers multiple years, or more than one grievant, the time period shall be extended to 180 days.
- (j) Revisions to the grievance processing procedures.
- (k) If a member is detailed to a unit, such as the Differential Response Unit or another administrative unit, during the pendency of an investigation, the member shall have no right to an award of lost overtime for the period of such detail if disciplinary or criminal charges are proffered, regardless of the ultimate result of those charges (e.g., dismissal or acquittal). If the District Attorney’s Office declines to prosecute, and no internal disciplinary charges are proffered, any award for lost overtime will be limited to the

period between the declination of charges and the member's reinstatement to his/her original assignment.

- (l) Create a pilot program for expedited arbitration.
- (m) The process for the selection of arbitrators shall be revised in such a manner to increase the pool of arbitrators, including but not limited to arbitrators who are more diverse, are residents of Philadelphia, and have diverse types of mediation or arbitration experience.
- (n) Additional terms shall be added to the Agreement to ensure that decisions by arbitrators do not render decisions in conflict with State and local law and judicial precedent.
- (o) Additional terms shall be added to the Agreement to ensure that arbitrators are confined to deciding the precise issues before them. Arbitrators shall have no authority to consider any other issue not so submitted to them and without the authority to make decisions regarding the exercise of discretion by the City under the provisions of this Agreement, its Charter, applicable laws or policies, so long as the exercise of this discretion does not conflict with the Agreement.
- (p) Additional terms shall be added to the Agreement regarding the evidentiary rules applicable to arbitration hearings that take into account the practical realities of arbitration and the parties' interests in submitting reliable, relevant evidence in arbitration.
- (q) An arbitrator shall only apply the preponderance of the evidence standard in all arbitrations.

## 8. HEALTH AND WELFARE

- (a) Paragraphs 5(c)(6-7) of the 2017-2020 Supplemental Award shall be deleted.
- (b) Beginning July 1, 2021 and each year thereafter, employee and retiree contributions to the cost of the health benefits shall be implemented for each plan offered by LEHB. Separate costs/premiums shall be set by coverage tier. The amount of the employee and retiree contributions shall be comparable to the contributions paid by participants in the City Administered Plan in the comparable plans and coverage tiers. To the extent that LEHB offers options for retirees that are not offered by the City Administered Plan, retirees who participate in those options shall contribute at the same level as active employees.
- (c) Effective July 1, 2021, LEHB shall implement medical plans with increased deductibles and co-payments to reduce the actuarial values as determined

by the medical third party administrator (TPA) to no greater than the plans offered by the City of Philadelphia for the employees covered by its plans.

- (d) Implement a viable wellness program that can measure employee participation and improvement year after year.
- (e) Implement a tobacco surcharge for covered employees and spouses/life partners.
- (f) Create a Health and Welfare Board that is representative of the membership of the bargaining unit.

9. HOURS OF WORK AND OVERTIME

- (a) Employees who are removed from their assignment for any reason, including being transferred to DPR or another administrative unit, suspended, or terminated, shall not be entitled to back overtime for any period of time that they are removed or transferred, regardless of the reason for transfer/removal and regardless of the manner in which they are reinstated.
- (b) The City shall have the flexibility to eliminate guaranteed overtime, change how overtime is assigned and change scheduling of paid leave.

10. COMPENSATION

- (a) Subject to the City's approved Five Year Plan and budget, the costs to the City imposed by the contract shall be consistent with the City's ability to pay, which shall be accorded substantial weight as mandated by the PICA statute, without adversely affecting levels of service.<sup>4</sup>

11. APPEARANCE BEFORE CIVIL OR JUDICIAL BODIES

- (a) Article VI, Section G(7) of the Contract shall be deleted.

12. WORK SCHEDULES

- (a) The City shall have the flexibility to change work schedules during declared emergencies and to meet the day to day operational needs of the department without the payment of overtime, except overtime required by the Fair Labor Standards Act, including but not limited to the following:
  - (i) During an emergency, crime event, or other extraordinary circumstance, the Department shall have the right to temporarily

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<sup>4</sup> Submitted as declaration of an existing right.

adjust the starting time of any employee(s) without being required to pay overtime as a result of the change.

- (ii) The Department's existing right to adjust an employee's normal scheduled starting time shall be expanded. The Department shall be entitled to adjust an employee's normal scheduled starting time up to twelve (12) days per year for up to six (6) hours without the payment of overtime. Employees will be given at least twenty-four (24) hours advance notice whenever practical.
- (iii) The Department shall be entitled to adjust an employee's normal scheduled shift up to twelve (12) days per year without the payment of overtime to provide for non-MPO training.
- (iv) Employees who volunteer for work details or training that would require a change in their work schedule may have their schedule adjusted without the payment of overtime.
- (v) The Department may adjust the starting times of employees in Specialized Investigations and Homeland Security by up to eight (8) hours to handle special assignments without payment of additional overtime upon notice to affected employees.

### 13. VACATION

The following shall govern the section of vacation for employees hired on or after July 1, 2021:

"The Department will assign group numbers to each week in the year. Assignment of vacation by group numbers will be on a year-round basis to ensure balanced staffing for the Department at all times. Employees may select vacation weeks based upon seniority. The new year-round system will provide for a smaller number of vacations in each week in the current prime vacation periods and more employees assigned to vacation weeks during non-prime periods. Employees shall continue to be permitted to trade vacation periods."

### 14. SICK LEAVE:

Changes shall be made to the existing sick leave provisions as necessary to reduce sick leave and absenteeism, including, but not limited to, the following:

- (a) The definition of pattern abuse contained in the sick leave policy shall include certified and uncertified days and shall permit examination of sick leave usage over multiple years of service.
- (b) Employees shall be placed on the excessive use list after using five (5) uncertified sick days in any twelve-month period.

- (c) Employees placed on the excessive use of sick leave list shall not earn sick leave until they have been removed from that list.
- (d) All employees shall be subject to visitation by the department while on sick leave to verify that the employee is unable to work.
- (e) Employees who use uncertified sick leave shall be precluded from working voluntary overtime for a period of thirty (30) days from their return to work.
- (f) Employees shall be required to bring in a doctor's note for each absence that exceeds two (2) consecutive scheduled work days.
- (g) Sick leave taken when scheduled for a court appearance shall be subject to the sick leave policy.
- (h) Employees who call out sick from a regularly scheduled shift or a scheduled court appearance shall receive an occurrence under the sick leave policy, even if the officer later reports for duty that day.

15. HOLIDAYS

Adjust the observed holidays.

16. PERFORMANCE EVALUATIONS

- (a) Two consecutive overall unsatisfactory performance ratings shall be the basis for discharge.
- (b) Section XXII(A) of the Contract shall be deleted, leaving the City free to develop comprehensive performance evaluation forms, ratings and standards in accordance with its managerial rights. Further, the City shall, in accordance with its managerial rights, have the unfettered right to establish the criteria for a police officer to be eligible for a promotion.<sup>5</sup>

17. PROMOTIONS

Employees shall serve a probationary period of one (1) year following appointment to another rank.

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<sup>5</sup> Submitted as a declaration of an existing right.

18. MEDICAL EXAMINATIONS

The Department shall create a committee, which shall include representatives of the FOP and the Department, to discuss the implementation of medical examinations.

19. FRATERNIZATION

Update policy regarding relationships between personnel.<sup>6</sup>

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<sup>6</sup> Submitted as a declaration of an existing right.